IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 12543 of 1998

Between:

M.Suryanarayana murthy, S/o Atchutaramayya,
R/o Hyderabad.

... PETITIONER

AND

1 Govt. of A.P., rep. by its Secretary, Law Courts and Justice

Department, Secretariat, Hyderabad.
2 A.P. Advocate's Clerk Welfare Fund, rep. by its Secretary,
High Court Building, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order preferably in the nature of Certiorari calling for the records from the file of the 2nd respondent relating to the orders passed in R.O.C.No.APACWF/83/97 dt.16-7-1997 and R.O.C No.APACWF/53/98 DT.24-3-1998 and quash the same and further declare Sec.15 (10) of the A.P.Advocte's Clerks Welfare Fund Act, 1992 (Act 13/92) as Void ab initio and unenforceable and further declare that the petitioner be continued as a member of the A.P. Advocates 'Clerks' Welfare Fund.

Counsel for the Petitioner: MR.M.KRISHNA MOHAN RAO

Counsel for Respondent No.1: GP FOR HOME

Counsel for Respondent No.2: Mr. L. Nanda Kishore

The Court made the following:

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12543 of 1998

O r d e r:

The petitioner, who is an Advocate Clerk, claims that he started his career as Advocate Clerk in the year 1948 at Madras, and before shifting to A.P. High Court at Hyderabad, he worked at Guntur. After coming into force of Andhra Pradesh Advocates' Clerks' Welfare Fund Act, 1992 (hereinafter referred to as 'the Welfare Fund Act'), the petitioner states that on the application made by him, he was admitted to the membership of the Welfare Fund on 24-4-1993 by respondent No.2 Secretary, A.P. Advocates' Clerks' Welfare Fund. While so, he states that the then Secretary of the A.P. High Court Advocates' Clerks' Association (hereinafter referred to as 'the Association'), at the instance of the President of the Association, vide his letter dated
18-3-1997, informed respondent No.2 that he and others, whose names do find a mention in the letter, were doing job typing work in the premises of the High Court having obtained permission from the Registrar. The petitioner states that thereafter, on 20-3-1998 the Association in its General Body Meeting having taken note of the high-handed behaviour of its President, resolved not to take further action in pursuance of the complaint dated 18-3-1997.

As the matters stood thus, the petitioner states that respondent No.2, surprisingly issued a notice dated 22-4-1997 calling upon him to show cause as to why his name should not be removed from the rolls of the membership of the Welfare Fund. The petitioner states that in reply thereto, he submitted his explanation on 25-4-1997 supported by a Certificate dated 25-4-1997, issued by the Advocate with whom he is working as Clerk-cum-Typist, stating that inasmuch as keeping of typewriter in the premises of the High Court is not permitted, he had obtained permission to work as job-typist in the High Court, and though he obtained such permission, he used to type only dockets and other miscellaneous typing works of his Advocate, and sometime he used to get the said typing works done by

his junior Clerk. However, the Committee of respondent No.2 in exercise of the powers conferred upon them under Section 15(1) of the Welfare Fund Act, passed orders dated 16-7-1997, removing the petitioner and seven others from the rolls of the membership of the Welfare Fund. The review petition preferred by the petitioner against the said order, as provided under Section 20 of the Welfare Fund Act, was also rejected by respondent No.2 by his orders dated 24-3-1998. Aggrieved by the said orders, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner, the learned Government Pleader for Home for respondent No.1 and the learned counsel for respondent No.2.

The learned counsel for the petitioner submitted that inasmuch keeping a Typewriter in the premises of the High Court is not permitted, the petitioner obtained job-typist permission from the Registrar of the High Court, and though he obtained such permission, he at no point of time did job-typing work and only used to type the dockets and other miscellaneous works of the Advocates with whom he is working.
He further submitted that the petitioner is aged about 68 years, and has become very old and feeble, and given his old age, he cannot be believed to be attending to arduous job-typing works to earn extra income. He submitted that the Secretary of the Association, at the instance of its the then President, who was inimical to the petitioner, informed respondent No.2 that the petitioner was working as job-typist, which is incorrect. The fact that the then President of the Association was inimical to the petitioner and had acted high-handedly against the petitioner, is quite evident from the fact that the Association in its General Body Meeting held on 20-3-1998 had taken note of his high-handed behaviour and resolved to drop further action in the matter. He thus submitted that the action of respondent No.2 in acting on the information provided by the Secretary of the Association, and passing the impugned order, removing the petitioner from the rolls of the membership of the Welfare Fund, and the further order passed by respondent No.2 rejecting the review petition filed by the petitioner to review the order removing him from the membership of the Welfare Fund, are illegal and arbitrary. He, thus prayed that the writ petition be allowed.

Respondent No.2 filed counter. The learned Government Pleader for Home for respondent No.1 and the learned counsel for respondent No.2 while reiterating the counter averments submitted that the petitioner was admitted to the membership of the Welfare Fund on
24-4-1993, and at the time of admission, he filed Form No.3, wherein he declared

that he is not in fulltime service or business or any such part-time business or other avocation, but the petitioner suppressing the fact that he obtained job-typist permission and was working as such, obtained membership to the Welfare Fund. Inasmuch as the petitioner, having taken job-typist permission from the Registrar of the High Court, was engaged in job-typing work, and having regard to the provisions of Section 14(1) of the Welfare Fund Act, which requires the Association to inform the Welfare Fund Committee, as to the list of members or any change in membership by the end of March of every year, the Secretary of the Association informed respondent No.2 that the petitioner and seven others were engaged in job-typing work. Immediately upon receipt of such information, respondent No.2 called upon the petitioner to show cause as to why he should not be removed from the rolls of the membership of the Welfare Fund. In reply to the show cause notice, the petitioner submitted his explanation admitting that he obtained job-typist permission from the Registrar of the High Court and was doing both clerical as well as typing work. Inasmuch as the petitioner has himself admitted that he was doing typing work, respondent No.2 passed the impugned orders one removing the petitioner from the rolls of the membership of the Welfare Fund and the second rejecting the review petition filed by him to review the order removing his name from the rolls of the membership of the Welfare Fund, and no exception can be taken thereto.

The A.P. Advocates' Clerks' Welfare Fund Act, 1992 is a benevolent legislation framed and designed by the Government for the benefit and welfare of the Advocate Clerks, who have been and are engaged in assisting the Advocates in their noble profession of rendering justice to the people, by attending to clerical and other incidental jobs, such as filing of cases, typing of dockets, filling of various forms, procuring of certified copies of the orders passed by the Courts in various cases, and other such works. The Welfare Fund Act, having been designed to benefit the Clerks working with the Advocates, except they, no other person can claim to become a member of the Welfare Fund created thereunder or claim to derive any benefit therefrom.

There is no dispute about the fact that the petitioner is working as Advocate Clerk since 1948 and that at the time of seeking admission to the membership of the Welfare Fund in the year 1993, he submitted Form No.3 stating that he is not in full time service or business or any such-part time business or other avocation. There is also no dispute that an Advocate Clerk, who is admitted to the membership of the

Welfare Fund, is not permitted to take up any other avocation, except that of attending to clerical works of the Advocates with whom they are employed as such, and given the nature of duties of an Advocate Clerk, which are mostly clerical in nature, it can be said that it sometimes includes typing works, in that some of them make use of the typewriters to fill various forms and dockets of the cases instead of filling them with their own hand-writing.

Admittedly, the petitioner much before his admission to the membership of the Welfare Fund, obtained job-typist permission from the Registrar of the High Court in 1987, and though the petitioner at the time of obtaining membership to the Welfare Fund is said to have submitted Form No.3 stating that he is not in fulltime service or business or any such part-time business or other avocation, the fact remains, it is his specific case that as keeping a Typewriter in the premises of the High Court is not permitted, he obtained job-typist permission, and though he obtained such permission, at no point of time he attended to the job-typing works, and that he used to merely type dockets and other miscellaneous works of the cases of the Advocate with whom he was working as Advocate Clerk, and that too whenever he found time, and to support the stand taken by him, he filed the Certificate issued by the Advocate, Sri. A.T.M. Rangaramanujam. When it is the specific case of the petitioner that he is not engaged in job-typing work and was only attending to the typing of dockets and other miscellaneous works of the Advocates with whom he is working as Advocate Clerk, and having regard to the fact that for keeping a typewriter in the premises of the High Court, permission of the Registrar is necessary, the petitioner obtained permission, and merely because the petitioner obtained job-typist permission from the Registrar, it cannot be conclusively said that he was working as job-typist, and more so when there is no material placed before this Court to show that the petitioner was found soliciting clients for job typing works or was physically found attending to job-typing works of persons other than the Advocates with whom he was working as Advocate Clerk. Further, it is not the case of the respondents that the petitioner is not an Advocate Clerk and that he obtained membership to the Welfare Fund by fraud or misrepresentation or exerting undue influence.

Be that as it may, the petitioner claims to be working as an Advocate Clerk since 1948, and at the time when he was removed from the rolls of the membership

of the Welfare Fund, he was aged about 68 years, and it would be unwise to believe that a person aged about 68 years, who by then had grown very old and had become feeble, would attend to arduous typing works running into several pages. Having regard to the fact that the petitioner has been working as Advocate Clerk since 1948, and he having rendered nearly 50 years of service as Advocate Clerk having worked under various Advocates,

denying him the benefit of the Welfare Fund, which has been constituted for the benefit and welfare of the Advocates Clerks, would be improper, and more so on the grounds alleged in the impugned orders. In that view of the matter, the impugned order passed by respondent No.2 one removing the name of the petitioner from the rolls of the membership of the Welfare Fund and the other rejecting the review petition filed by the petitioner, on the ground that the petitioner having been granted job-typist permission for functioning in the premises of the High Court, does not come within the definition of Advocates Clerk as defined in Section of 2(1) of the Welfare Fund Act, cannot be sustained, particularly when the work of an Advocate Clerk also includes typing works.

For the foregoing reasons, the writ petition is allowed. The impugned orders are set aside. The petitioner shall be restored to the rolls of the membership of the Welfare Fund, and shall be paid the benefits, which he may be entitled to by virtue of his being a member thereof. No costs.

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N.V. RAMANA,J.

Date: 7th June, 2005.

KSR

Copy to. –

1 The Secretary, Law Courts and Justice Department, Govt. of A.P.,

Secretariat, Hyderabad.

2 The Secretary representing the A.P. Advocate's Clerk Welfare Fund, High Court Building, Hyderabad.

Two C.C. s to the G.P. for Home, High Court of A.P., Hyderabad

(OUT)

Two C.D. Copies.

*Form-NIC-OGS/WP {**VEENA**}*